IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted]

UNITED STATES OF AMERICA,
Petitioner,
vs.
THE UNION CENTRAL LIFE INSURANCE COMPANY,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Supreme Court of the State of Michigan (Appendix A, pp. 17-22 of Petition) is reported at 361 Mich. 283, 105 N. W. 2d 196.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether a state can protect local property interests by requiring, as a condition to the filing of a notice of federal tax lien, that the notice of said lien describe the real property to which it attaches.

STATUTES INVOLVED

Sections 3670, 3671 and 3672 (a) (1), (2) of the Internal Revenue Code of 1939 and Sec. 6323 of the Internal Revenue Code of 1954 and 6 Mich. Stat. Ann. 7.751 are set forth in Appendices B and C, pp. 24-26 of the Petition.

STATEMENT

Petitioner's statement, commencing on p. 2 of the Petition, is entirely erroneous in part and demands clarification in other respects.

The assertion is made in the Petition that "the State of Michigan follows the so-called Torrens system for the registration of real estate titles." Footnote 1 of the Petition states that the facts were stipulated thereby indicating that Respondent stipulated to the fact that Michigan was a Torrens system state. As a matter of fact neither the

Torrens system nor any other system for registration of land titles is now in effect in the State of Michigan and no such system has ever been in effect in this state. Consequently, Respondent would not and did not stipulate this fact. One of the principal reasons urged for the granting of the Petition is that the Torrens system is in effect in eleven other states, and, if the present decision of the Michigan Supreme Court is allowed to stand, a large volume of litigation might follow. It is obvious therefore that the fact that the Torrens system is not operative in Michigan automatically disposes of one of the main reasons proposed for the granting of the Petition, and removes much of the force of Petitioner's entire argument for the Writ.

The facts as regards the Federal statute providing for the filing of notices of United States tax liens as set forth in the Petition require clarification. The Petition creates the erroneous impression that the Michigan recording statute (Act 104 of the Public Acts of 1923, 6 Mich. Stat. Ann. Sec. 7.751), requiring all notices of United States tax liens to contain a legal description of the land for recording purposes, was enacted in complete disregard and violation of the applicable provisions of the Internal Revenue Code. Such was by no means the case, as the following facts disclose.

The pertinent portion of Sec. 3672(a) of the Internal Revenue Code read as follows:

> "(a) Invalidity of Lien without Notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the creditor—
>
> "(1) Under State or Territorial Laws.—In accordance with the law of the State or Territory in which the property subject to the lien is situated,

whenever the State or Territory has by law provided for the filing of such notice; or

"(2) With Clerk of District Court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law provided for the filing of such notice; or * * *."

Under the 1942 Amendment to Sec. 3672(a), the phrase "in accordance with the law of a State or Territory" was deleted, and the phrase "in the office in which the filing of the notice is authorized by the State or Territory" was substituted.

Nevertheless, in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), where the cause of action arose after the amendment, the Circuit Court of Appeals for the Sixth Circuit held that this change in the wording of the statute did not alter the legal situation as to the recording of the notice of lien and that Congress did not intend by this language to impeach a State's right to protect its citizens by imposing reasonable requirements with respect to recordation. The above construction of the statute has become a rule of property in this State and has been relied on for many years by those acquiring an interest in real estate, as well as title companies issuing policies of insurance.

The Michigan statute providing for the recording of notices of federal tax liens was enacted in 1923, long before the 1942 amendment to the applicable provision of the United States Internal Revenue Code above quoted, and remained on the statute books until 1956 when it was repealed.

As stated in the Petition, there was a further amendment to the federal act which appears in Section 6323 of the Internal Revenue Code of 1954, and which provides that if the notice of lien is in such form as would be valid if filed with the Clerk of the United States District Court it will be valid notwithstanding any law of the State or Territory regarding the form or content of the notice of lien. This amendment, however, did not become effective until January 1, 1955, which is subsequent to the date of the filing of the notice of tax lien which is the subject of this litigation, the latter having been filed on July 2, 1954. The mortgage from Robert G. Peters, Jr. and Helen R. Peters, his wife, to The Union Central Life Insurance Company was executed on November 10, 1954 and recorded November 24, 1954.

ARGUMENT

I.

THE DECISION BELOW REFLECTS THE POLICY OF THE UNITED STATES SUPREME COURT

The policy of the Supreme Court of the United States with respect to federal tax liens is well stated in the case of *United States v. Brosnan*, 363 U. S. 237, 241, from which we quote as follows:

> "We nevertheless believe it desirable to adopt as federal law state law governing divestiture of federal tax liens, except to the extent that Congress may have entered the field. It is true that such liens form part of the machinery for the collection of federal taxes, the objective of which is 'uniformity, as far as may be'. *United States v. Gilbert Asso-*

> *ciates*, 345 U. S. 361, 364, 73 S. Ct. 701, 703, 97 L. Ed. 1071. However, when Congress resorted to the use of liens, it came into an area of complex property relationships long since settled and regulated by state law. We believe that, so far as this Court is concerned, the need for uniformity in this instance is outweighed by the severe dislocation to local property relationships which would result from our disregarding state procedures. Long accepted non-judicial means of enforcing private liens would be embarrassed, if not nullified where federal liens are involved, and many titles already secured by such means would be cast in doubt. We think it more harmonious with the tenets of our federal system and more consistent with what Congress has already done in this area, not to inject ourselves into the network of competing private property interests, by displacing well-established state procedures governing their enforcement, or superimposing on them a new federal rule. Cf. *Board of Com'rs of Jackson County v. United States*, 308 U. S. 343, 60 S. Ct. 285, 84 L. Ed. 313."

It has been a long-established policy of the Legislature and Courts of the State of Michigan to give full recognition and protection to the recording laws of the State, to the end that they may be relied upon insofar as is practicable to furnish evidence of the ownership and validity of interests in real estate. The Michigan Legislature, for example, has always required that notices of levy on execution and attachments contain a legal description of the land intended to be subjected thereto. Judgments alone in Michigan do not constitute a lien on real estate. This purpose would have been seriously impaired by the indiscriminate filing of instruments containing no legal description of the land affected thereby, particularly where the then existing statutes and court decisions indicated that a description was

necessary. Prior to the 1942 amendment the federal statute pertaining to the recording of notices of federal tax liens gave recognition to this policy and similar long-established policies of other States by providing for the filing of such notice *in accordance with the law of the State or Territory in which the property subject to the lien is situated.* The case of *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6) held that by the 1942 amendment Congress did not intend to effect any fundamental change in the law, and did not intend thereby to impeach a State's rights to protect its citizens by imposing reasonable requirements with respect to recordation. It is our contention therefore that the *Youngblood* decision is much more in harmony with the language above quoted from *United States v. Brosnan,* 363 U. S. 237, than is the holding in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C.A. 8), which was decided in another Circuit and pertained to a jurisdiction where the Torrens system of land titles was in effect. The decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), has become a rule of property in the State of Michigan and many individuals purchasing real estate or interests therein, as well as title and mortgage companies have, as a consequence, relied upon the records of the Register of Deeds rather than make additional searches in other offices where a notice of lien might be filed. In modern times the pressure of business is too great for one to do those things which the law tells them is unnecessary. In accordance with the policy of the United States Supreme Court as outlined in the *Brosnan* case, *supra,* the decision in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), should not be over-ruled.

II.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION

After the effective date of the 1954 amendment to the federal statute concerning notices of tax liens, it is conceded that States and Territories could no longer prescribe the form and content of a notice of federal tax lien but merely designate an office for filing. Subsequently the Michigan statute requiring the insertion of a description of the land in question in all notices of federal tax liens, as a prerequisite for recording in the office of the Register of Deeds, was repealed, although the repeal did not take place until 1956 (Act 107, Public Acts of 1956, 6 Mich. Stat. Ann. Sec. 7.751, 7.752, 7.753). In the vast majority of cases where notices of federal tax liens have been filed against mortgaged property where foreclosures or other priority contests have arisen the notices have been filed since the effective date of the 1954 amendment. Much is made in the Petition of the fact that, according to estimate, four thousand notices of liens were filed annually in Michigan prior to 1957. The effect of this figure is very misleading. In the first place, a considerable percentage of these notices of lien must have been filed against persons who had no real estate. Secondly, even where the taxpayer owned real estate, a further percentage was doubtless filed against persons who had created no subsequent interests in their land, so that no question of priority could have arisen. Thirdly, in those cases where mortgages on real estate do exist, the records show repeated instances where notices of federal tax liens were filed after the recording of the mortgages so that the tax liens would in any event be subordinate, regardless of the place of filing, or whether they contained a description or not. In other words, the Government's ground for concern would be limited to those

cases where both (1) the notice of tax lien was filed prior to the effective date of the 1954 amendment, and (2) the taxpayer had real estate encumbered by a mortgage or had conveyed by an instrument, which in either case was recorded after the filing of the federal tax lien. We venture to state that the number of cases where the above set of facts concurrently exist constitute but a very small fraction of the number of annual liens mentioned in the Solicitor General's petition. The Petition does not disclose any cases presently pending in which the question is in controversy. Furthermore, as time goes on, the number of cases involving the situation complained of in the petition must necessarily diminish so that in a comparatively short period of time the question will become entirely academic. We submit that even at the present time this number is so small, and its effect on the revenue collecting agencies of the Government is of such minor consequence that the petition for a writ of certiorari should be denied.

III.

EFFECT OF STATUTE OF LIMITATIONS

Lastly, and most important of all, the enforcement of United States tax liens is barred by the statute of limitations, after the expiration of a period of six years from the date of assessment. Hence the six-year limitation period would normally have expired January 1, 1961, at the latest, as to all liens, notice of which was filed prior to the effective date of the 1954 amendment. As previously stated, no question can be raised as to the priority of those notices of lien filed after January 1, 1955 because of failure to include a legal description of the land in question.

It is true that the running of the statute of limitations is suspended in certain instances, but questions can now arise only in those cases where the statute has been tolled, and then only where the special set of circumstances described in the preceding paragraphs exist. Therefore, the number of liens filed prior to January 1, 1955, where the possibility of contest exists because of a lack of legal description, must necessarily be further reduced to a point which is absurdly low and in all probability negligible. Even this small number is continually decreasing with the passage of time.

Accordingly, it is submitted that the petition for the writ of certiorari should be denied for the following reasons:

1) The fact that the statement that Michigan operates under the Torrens system is completely erroneous removes one of the principal reasons, if not the main reason, urged for the granting of the writ of certiorari.

2) The decision of the Circuit Court of Appeals in *Youngblood v. United States,* 141 F. 2d 912 (C.A. 6), is much more in harmony with the policy of the United States Supreme Court as enunciated in *United States v. Brosnan,* 363 U. S. 237, 241, than the decision in the case of *United States v. Rasmuson,* 253 F. 2d 944 (C. A. 8).

3) Subject to the statements contained in paragraph 4) following, a question of priority can only arise in those cases where the notice of lien was filed prior to January 1, 1955 against a taxpayer whose land has subsequently been encumbered by a mortgage or where he has subsequently sold and conveyed his land, or some interest therein, to another person or persons.

4) All cases where questions of priority can exist are now barred by the statute of limitations and can arise only where the running of the statute has been suspended. While figures are not, and in the nature of things cannot be available, it seems evident that those cases where a contest would now be possible must be negligible. In any event, the entire question will very soon become completely academic.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for writ of certiorari should be denied.

Respectfully submitted,

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